

TEXAS MANUFACTURED HOUSING STANDARDS ACT**CHAPTER 625****S. B. No. 636**

An Act amending and revising the Texas Mobile Home Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), to be known as the Texas Manufactured Housing Standards Act; providing for regulation of the construction, sale, transportation, and installation of manufactured housing and setting forth such regulation; and providing penalties.

Be it enacted by the Legislature of the State of Texas:

Section 1. Section 1, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended ⁴ to read as follows:

Short title

"Section 1. This Act may be cited as the Texas Manufactured Housing Standards Act."

Sec. 2. Section 2, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended ⁵ to read as follows:

Purpose

"Sec. 2. The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies. In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes."

Sec. 3. Section 3, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended ⁶ to read as follows:

Definitions

"Sec. 3. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

"(a) 'Mobile home' means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or

4. Vernon's Ann.Civ.St. art. 5221f, § 1.

5. Vernon's Ann.Civ.St. art. 5221f, § 2.

6. Vernon's Ann.Civ.St. art. 5221f, § 2.

more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

"(b) 'Retailer' means any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

"(c) 'Manufacturer' means any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.

"(d) 'Department' means the Texas Department of Labor and Standards.

"(e) 'Person' means an individual, partnership, company, corporation, association, or other group, however organized.

"(f) 'Broker' means a person engaged by others to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of their manufactured homes at the site where installed to consumers. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

"(g) 'Consumer' means any person who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

"(h) 'Decal' means a device or insignia issued by the department that is permanently affixed to each transportable section of each modular home to indicate compliance with the standards, rules, and regulations established by the department.

"(i) 'Seal' means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

"(j) 'Label' means a device or insignia issued by the department to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each mobile home manufactured after June 15, 1976, for sale to a consumer.

"(k) 'Installation,' when used in reference to manufactured housing, means the transporting of manufactured homes to the place where they will be used by the consumer, the construction of the foundation system, whether temporary or permanent, and the placement of a manufactured home on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable units and minor adjustments.

"(l) 'Installer' means any person, including a retailer or manufacturer, who performs installation functions on manufactured housing.

"(m) 'Alteration' means the replacement, addition, and modification, or removal of any equipment or its installation after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modifica-

tion made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring 'plug-in' to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

"(n) 'Lease-purchase' means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.

"(o) 'Commissioner' means the Commissioner of the Texas Department of Labor and Standards.

"(p) 'Code' means the Texas Manufactured Housing Standards Code.

"(q) 'Modular home' means a structure or building module that is manufactured at a location other than the location where it is installed and used as a residence by a consumer, transportable in one or more sections on a temporary chassis or other conveyance device, and designed to be used as a permanent dwelling when installed and placed upon a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The term does not include a mobile home as defined in this Act; nor does it include building modules incorporating concrete or masonry as the primary structural component.

"(r) 'Salesperson' means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.

"(s) 'Manufactured housing' or 'manufactured home' means a mobile home or a modular home or both.

"(t) 'Registrant' means any person who has registered with the department and has been issued a certificate of registration as a manufactured housing manufacturer, retailer, broker, or installer."

Sec. 4. Section 4, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Manufactured housing standards

"Sec. 4. (a) The department shall adopt standards and requirements for the installation and for the construction of manufactured housing, that are reasonably necessary in order to protect the health, safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.

"(1) The requirements and standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, remain in full force and effect until amended in accordance with the procedure set forth in this section.

"(2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the Housing and Com-

7. Vernon's Ann.Civ.St. art. 5221f, § 4.

munity Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.

"(8) The department shall adopt standards and requirements for the construction of modular homes which shall not be less stringent than the standards and requirements for the construction of mobile homes.

"(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of hurricane-force velocity of not less than 105 miles per hour and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity.

"(1) The requirements and standards for the installation of mobile homes as adopted by the department in existence on August 31, 1979, remain in force until amended in accordance with the procedure set forth in this section.

"(2) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the department.

"(3) The department may cooperate with all units of local government within this state in the establishment of inspection training programs and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the installation of manufactured housing pursuant to contracts or other official designations and the rules and regulations of the department.

"(c) A political subdivision of this state, without the express approval of the department following a hearing on the matter, may not adopt different standards from those promulgated by the department for the construction or installation of manufactured housing within the political subdivision.

"(d) Before the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or the approval of different standards by any political subdivision, the department shall publish a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes), not sooner than the 30th day following the publication of notice.

"(e) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect."

Sec. 5. Section 6, Texas Mobile Homes Standards Act, as amended (Article 6221f, Vernon's Texas Civil Statutes), is amended^a to read as follows:

Regulations

"Sec. 6. (a) It is unlawful for any manufacturer to construct mobile homes in this state for sale or resale unless such manufacturer has supplied the department with proof of acceptance by a Design Approval Primary Inspection Agency authorized by the Department of Housing and Urban Development, has purchased the required labels, and has all mobile

a. Vernon's Ann.Civ.St. art. 6221f, § 6.

homes manufactured in this state inspected by an accepted In-Plant Inspection Agency authorized by the Department of Housing and Urban Development. It is unlawful for a manufacturer to ship mobile homes into the state for sale or resale unless the manufacturer has complied with all requirements of the National Mobile Home Construction and Safety Standards Act of 1974 and all standards, rules, and regulations of the Department of Housing and Urban Development.

"(b) It is unlawful for any manufacturer to construct modular homes in the state or to ship modular homes into the state for sale or resale unless constructed to the code and unless the manufacturer has received approval by the department of the design and specifications for the construction of its modular homes and of its quality control program to assure compliance with the requirements and standards of the Texas Manufactured Housing Standards Code, has purchased the required decals, and has the modular homes inspected pursuant to the regulations of the department.

"(c) Before the sale of a manufactured home to a consumer and before its installation, it is unlawful for any manufacturer, retailer, broker, or installer to make any alteration on a manufactured home to which a seal, label, or decal has been affixed or cause such an alteration to be made, unless prior written approval has been obtained from the department.

"(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a person in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal.

"(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a registered retailer.

"(f) A person may not sell, exchange, or lease-purchase any manufactured home to another person in the state for use as a dwelling or residence, unless the manufactured home is habitable."

Sec. 6. Section 7, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended¹ to read as follows:

Registration

"Sec. 7. (a) A person may not construct or assemble a manufactured home in the state or ship a manufactured home into the state, unless the person is registered as a manufactured housing manufacturer by the department and possesses a valid manufacturer's certificate of registration.

"(b) A person may not sell, exchange, lease-purchase, or offer to sell, exchange, or lease-purchase two or more manufactured homes to consumers in the state in any consecutive 12-month period, unless the person possesses a valid manufactured housing retailer's certificate of registration.

"(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in the state in any 12-month period, unless the person possesses a valid manufactured housing broker's certificate of registration.

¹ Vernon's Ann.Civ.St. art. 5221f, § 7.

"(d) A person may not perform any installation functions on manufactured housing in the state, unless the person possesses a valid installer's certificate of registration.

"(e) Each applicant for a certificate of registration as a manufacturer, retailer, broker, or installer must file with the department an application for registration containing the following information:

"(1) the legal name, address, and telephone number of the applicant;

"(2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and

"(3) the dates on which the applicant became the owner and operator of the business.

"(f) Each application for a certificate of registration must be accompanied by proof of the security required by this Act and payment of the required fee for the issuance of the certificate.

"(g) All certificates of registration are valid for one year from the date of issue and are renewable annually on payment of the annual fee; provided, however, that the initial certificates of registration issued to registrants as of September 1, 1979, may be issued for periods of less than one year and the annual fee shall be prorated proportionally.

"(h) The department by rule may adopt a system under which the licenses issued under this article expire on various dates during the year. For the year in which the expiration date is changed, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

"(i) If a change occurs in the information filed with the department under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.

"(j) While acting as an agent for a registrant, an employee is covered by the business entity's certificate of registration and is not required to be individually registered. An independent contractor or business entity may not operate under the certificate of registration of another business entity except as an agent or subcontractor of a registered installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor.

"(k) The commissioner, after notice and hearing, may revoke or suspend for a definite period of time and for a particular geographic area any certificate of registration issued under this Act if the commissioner finds that the registrant:

"(1) knowingly and willfully violated any provision of this Act or any rule or regulation made pursuant to this Act after receipt of actual notice of any failure to comply;

"(2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits, or insurance premiums;

"(3) failed to deliver proper title documents or certificates of title to consumers;

"(4) failed to give or breached any manufactured home warranty required by this Act or by the Federal Trade Commission;

"(5) engaged in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts are declared unlawful by the

provisions of Chapter 17, Subchapter E, Business & Commerce Code; or
 "(6) failed to furnish or file any reports required by the department for the administration and enforcement of this Act.

"(i) The commissioner shall conduct any hearing involving the revocation or suspension of a certificate of registration in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252—18a, Vernon's Texas Civil Statutes)."

Sec. 7. Section 8, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended¹⁰ to read as follows:

Used mobile homes

"Sec. 8. A retailer or broker may not sell, exchange, or lease-purchase or negotiate for the sale, exchange, or lease-purchase of a used mobile home manufactured after December 12, 1969, unless an appropriate seal or label is affixed to it. If the used mobile home does not have a seal or label, the retailer or broker must apply to the department for a seal with an affidavit that the manufactured home is habitable."

Sec. 8. Subsection (b), Section 9, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended¹¹ to read as follows:

"(b) The department shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Act to effectuate and to provide for uniform enforcement of all provisions of this Act and of the Texas Manufactured Housing Standards Code. The department shall make and enforce rules and regulations reasonably required to effectuate the notification and correction procedures provided in Section 615 of the National Mobile Home Construction and Safety Standards Act of 1974."

Sec. 9. Subsection (h), Section 9, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended¹² to read as follows:

"(h) The department through its authorized representatives is authorized to enter at reasonable times and without advance notice any factory, warehouse, establishment, or location of a registrant to make any inspections that are reasonably required to determine whether a registrant is in compliance with this Act and the rules, regulations, and administrative orders promulgated under this Act."

Sec. 10. Subsection (j), Section 9, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended¹³ to read as follows:

"(j) The department may employ state inspectors to carry out the functions required of the department pursuant to this Act, to effectuate the provisions of this Act, and to enforce the rules, regulations, and administrative orders promulgated pursuant to this Act. The department may authorize state inspectors to travel inside or outside of the state to inspect manufacturing facilities in connection with the enforcement of this Act."

10. Vernon's Ann.Civ.St. art. 5221f, § 8.

11. Vernon's Ann.Civ.St. art. 5221f, § 9, subsec. (b).

12. Vernon's Ann.Civ.St. art. 5221f, § 9, subsec. (h).

13. Vernon's Ann.Civ.St. art. 5221f, § 9, subsec. (j).

Sec. 11. Subsection (k), Section 9, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended ¹⁴ to read as follows:

"(k) The department may contract with any federal agency or any agency or political subdivision of any state for the performance of any inspections or inspection programs pursuant to this Act or the rules and regulations of the department to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code."

Sec. 12. Section 9, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended by adding ¹⁵ Subsections (l) and (m) to read as follows:

"(l) The department may enter into contracts with the Department of Housing and Urban Development or its designees to monitor the Department of Housing and Urban Development programs.

"(m) When necessary or required by law, the department may obtain inspection search warrants."

Sec. 13. Section 11, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended ¹⁶ to read as follows:

Fees

"Sec. 11. (a) There shall be a fee of \$15 for the inspection of the installation of mobile homes which shall be paid by the installer of the mobile home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the mobile home. The department shall make fee distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

"(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974 and to that Act itself, the commissioner shall set fees for the following functions:

"(1) There shall be a schedule of fees for the review of mobile home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

"(2) There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

"(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

"(4) There shall be a fee for inspection of used mobile homes at retailer locations to check compliance with the code and to determine if the mobile home has been damaged in transit. This fee shall be paid by the retailer in possession of the mobile homes at the time the inspection was

14. Vernon's Ann.Civ.St. art. 5221f, § 9, subsec. (k).

15. Vernon's Ann.Civ.St. art. 5221f, § 9, subsecs. (l), (m).

16. Vernon's Ann.Civ.St. art. 5221f, § 11.

made. For any given mobile home at a retailer location, this fee may not be assessed more than one time.

"(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes. This fee shall be paid by the person making the alteration. The person shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection.

"(6) There shall be a fee for the issuance of seals for used mobile homes which shall be paid by the retailer or broker.

"(c) The installer of a modular home shall pay to the state a fee set by the commissioner for the inspection of the installation of the modular home. Before installation the installer shall notify the department of the exact location of the modular home and shall pay the fee.

"(d) Following a hearing pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252—13a, Vernon's Texas Civil Statutes), the commissioner shall set fees for the following functions:

"(1) a fee paid by the manufacturer for the review of modular home designs, blueprints, and specifications;

"(2) an inspection fee paid by the manufacturer for all modular homes manufactured in the state and for all modular homes manufactured outside of the state to be transported to retailers or consumers in the state;

"(3) a fee charged on an hourly basis and paid by the person making the alteration for an inspection of the alterations made on a modular home after construction and certification by the manufacturer and before the closing of a sale to the consumer;

"(4) annual fees for the issuance and renewal of manufacturers', retailers', brokers', and installers' certificates of registration; and

"(5) a fee for the issuance of decals that shall be paid by the manufacturer.

"(e) The person required to pay an inspection fee set in accordance with Subsection (d) of this section shall pay the cost of travel to and from the place of the inspection for representatives of the department who make the inspection.

"(f) All fees assessed under this Act shall be paid to the State Treasurer and placed in the General Revenue Fund.

"(g) The fees charged by the department in effect August 31, 1979, shall remain in effect until the new schedule of fees set forth in this section has been promulgated and adopted."

Sec. 14. Section 13, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended¹⁷ to read as follows:

Security required

"Sec. 13. (a) The department may not issue a certificate of registration, unless the applicant first files a surety bond, a cash deposit, or other security in such form as the commissioner may prescribe and a written irrevocable designation of the commissioner as agent for service of legal process.

"(b) If a surety bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by this Act. A cash deposit or other security need not be posted annually so

17. Vernon's Ann.Civ.St. art. 5221f, § 13.

long as the applicable amount specified in this section remains posted. If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which to deposit additional money or other security so that compliance may be had with the requirements of this section. If the deficit is not eliminated within 20 days, the certificate of registration of the inadequately covered manufacturer, retailer, broker, or installer is immediately suspended. If a bond is cancelled, the certificate of registration is immediately suspended.

"(c) If a cash deposit or other security is posted, the interest from said deposit shall go to the depositor.

"(d) The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code. The cash deposit or other security shall be in such a form as the commissioner may deem appropriate.

"(e) The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment against a manufacturer, retailer, broker, installer or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home, including but not limited to

"(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

"(2) failure to deliver proper title documents or certificates of title to consumers;

"(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission; or

"(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security shall not be liable for judgments resulting from tort claims, except as expressly set forth hereinabove, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the cash deposit or other security posted under this section be liable for an amount in excess of actual damages, restitution, or expenses, including reasonable attorney's fees. Any judgment obtained against a principal is conclusive against the surety or other security if notice of the filing of suit is given as required by this section. The bond or other security shall be open to successive claims up to the amount of face value of the bond or other required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

"(f) A consumer shall inform the manufacturer, retailer, installer, or salesperson, and the department of any claim against the bond or security no later than two years after the purchase of the mobile home. Whenever the department receives notice of the claim against a bond, the department shall promptly notify the bonding company involved. If the consumer claim results in a private lawsuit being filed by the consumer, the consumer shall notify the attorney general's office and the surety company by certified mail of the filing of the lawsuit. At the time of sale or

delivery of a manufactured home to a consumer, the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

"(g) Any manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond.

"(h) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A retailer shall be bonded, supply a cash deposit, or other security in the amount of \$25,000. A salesperson shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A broker shall be bonded, supply a cash deposit or other security in the amount of \$15,000. An installer shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer.

"(i) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the person ceases business as a manufacturer, retailer, broker, or installer or salesperson or at such time as the department may determine that no claims exist against the cash deposit or security."

Sec. 15. Section 14, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended¹⁸ to read as follows:

Warranties

"Sec. 14. (a) After the effective date of this Act, all new manufactured homes sold to consumers in the state shall be covered by the manufactured home warranty set forth in this section.

"(b) The manufactured home warranty provided for in this Act is given by the manufacturer of the manufactured home.

"(c) The manufactured home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

"(1) that the manufactured home complies with the code;

"(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later;

"(3) that the manufactured home and all appliances and other equipment installed and included therein by the manufacturer or retailer are free from defects in materials or workmanship;

"(4) that the manufactured home is installed in accordance with all standards, rules, regulations, administrative orders, and requirements of the department;

"(5) that the manufacturer or the retailer or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code;

18. Vernon's Ann.Civ.St. art. 5221f, § 14.

"(6) that the warranty contains the address of the retailer and manufacturer where notices of defects may be given; and

"(7) that the purchaser shall notify either the manufacturer or the retailer or both in writing of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the code.

"(d) The manufacturer and retailer are jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty.

"(e) For all installations not covered by the warranty as set forth in Subsection (c) of this section, the installer shall give each manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, requirements, rules, regulations, and administrative orders of the department."

Sec. 16. Section 17, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended ¹⁹ to read as follows:

Penalties

"Sec. 17. (a) A person, individual, or director, officer, or agent of a corporation who knowingly and willfully violates a provision of this Act or any rule, regulation, or administrative order of the department in a manner that threatens the health or safety of any purchaser or consumer commits a misdemeanor and on conviction shall be fined not more than \$1,000 or shall be confined in the county jail not longer than one year or both.

"(b) Any person who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

"(c) Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules, regulations, and administrative orders of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

"(d) Failure by a manufacturer or retailer to comply with the warranty provisions of this Act or any implied warranties or the violation of any provision of this Act by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this Act."

Sec. 17. Section 18, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended ²⁰ to read as follows:

Miscellaneous provisions

"Sec. 18. (a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.

19. Vernon's Ann.Civ.St. art. 5221f, § 17.

20. Vernon's Ann.Civ.St. art. 5221f, § 18.

"(b) No provision of this Act shall exclude any other remedy available at law or equity to the consumer.

"(c) If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"(d) If a retailer, broker, or installer does not possess a valid certificate of registration at the time of entering into any contract with a consumer, the contract between the consumer and the retailer, broker, or installer is voidable at the option of the consumer.

"(e) Nothing in this Act shall be construed to modify or amend any provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes).

"(f) Notwithstanding any provisions of any other statute, regulation, or ordinance to the contrary, an installer is not required to secure any permit, certificate, or license or pay any fee for the transportation of manufactured housing to the place where it is to be installed except as required by the department or the State Department of Highways and Public Transportation. The State Department of Highways and Public Transportation shall cooperate with the department in the routing of the transportation of housing and shall not issue any permits for the transportation of manufactured housing except to persons holding valid certificates of registration issued by the department."

Sec. 18. Sections 5, 10, and 15, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), are repealed.²¹

Sec. 19.²² This Act takes effect September 1, 1979. The standards and requirements for the construction and installation of modular homes established by this Act are effective January 1, 1980.

Sec. 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 19, 1979: Yeas 30, Nays 1; Senate concurred in House amendments on May 23, 1979, by a viva-voce vote; passed the House, with amendments, on May 18, 1979: Yeas 122, Nays 6, one present not voting.

Approved June 13, 1979.

Effective Sept. 1, 1979.

21. Vernon's Ann.Civ.St. art. 5221i, §§ 5, 10, 15, repealed. 22. Vernon's Ann.Civ.St. art. 5221f note.